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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ditech, LLC,

Debtor

**MOTION FOR
RELIEF FROM
AUTOMATIC STAY**

Chapter 11
Case No. 12-12020-mg
HON. MARTIN GLEN

First Niagara Bank, N.A. successor by merger to New Alliance Bank (hereinafter "FNB"), moves the above-entitled Court for an Order granting relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) to permit it to proceed with an action to foreclose its mortgage on certain real property, upon which the Debtor holds a subordinate security interest as of the Borrower more particularly described in a copy of a mortgage annexed hereto and made a part hereof as Exhibit "A." As grounds for said Motion, it is hereby alleged as follows:

I. Relief Requested

1. Pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014 and section 361, 362(a) of title 11 of the United States Bankruptcy Code this matter is brought seeking an order (i) granting FNB, its successors and or assigns relief from the automatic stay and (ii) granting FNB such other and further relief as is just and proper.

II. Background

2. On or about June 30, 2005, Joseph DeSisto and Feilomena DeSisto (hereinafter "Borrowers") entered into a mortgage loan agreement with New Alliance Bank. Under the terms of

the agreement New Alliance Bank loaned the Borrowers the principal sum of \$199,900.00. the indebtedness was evidenced by a note and mortgage. FNB is the owner and holder of the note and mortgage. See attached Exhibit "A: which is incorporated by reference. A copy of the Certificate of Merger between New Alliance Bank and FNB is annexed hereto and made a part hereof as Exhibit "B".

3. In preparing to commence a foreclosure proceeding against the real property secured by the mortgage a title search was conducted. The search revealed that on or about March 25, 2006 the Borrowers obtained a mortgage loan from GMAC Mortgage Corporation d/b/a ditech.com. A copy of the search is annexed hereto and made a part hereof as Exhibit "C".

4. Upon information and belief the Debtor is the holder of the subordinate mortgage set forth in the above-referenced title search.

III. Basis of Application

5. In order to proceed with its foreclosure action FNB must name all subordinate lien holders, including the Debtor.

6. 11 U.S.C. §362(a) provides that the filing of a petition under section 301, 302, or 303 operates as a stay applicable to all entities.

7. Pursuant to 11 U.S.C. §362(d)(1) the court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property . . . ". FNB seeks to commence a foreclosure action due to the Borrowers' default. Annexed hereto and made a part hereof as Exhibit "D" is the Affidavit of Richard Panaro, a bankruptcy specialist with FNB.

8. Grounds exist to vacate the stay in this case to allow FNB to proceed with a foreclosure action and FNB requests that the automatic stay imposed pursuant to 11 U.S.C. §362(a) be terminated for cause.

9. By reason of the foregoing, FNB, its successors and/or assigns should be permitted to take all necessary action to adequately protect its security interest.

10. It is requested that in the event that an Order Granting Relief from the Automatic Stay is granted, it is requested that such Order shall survive any conversion.

11. No previous application has been made for the relief requested herein.

WHEREFORE, FNB requests that this Court enter an Order granting FNB, its successors and/or assigns relief from the automatic stay, together with FNB's attorneys' fees and costs in the amount of \$1,000.00 if the Motion is settled conditionally, and such other and further relief as the Court may deem just and proper.

Dated: December 27, 2012

SCHILLER & KNAPP, LLP

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